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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL A. HAYES,

Defendant and Appellant.

B209085

(Los Angeles County
Super. Ct. No. BA 318409)

THE COURT:*

Carl A. Hayes appeals following his plea of no contest to one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11351. The trial court suspended imposition of sentence and placed appellant on three years of felony probation under terms and conditions that included serving 180 days in jail.

We appointed counsel to represent appellant on this appeal. After examination of the record, counsel filed an “Opening Brief” containing an acknowledgment that he had been unable to find any arguable issues. On October 2, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues that he wished us to consider. No response has been received to date.

* BOREN, P. J., DOI TODD, J., CHAVEZ, J.

According to appellant's notice of appeal, he is appealing from the denial of his motion to suppress evidence under Penal Code section 1538.5 and his *Trombetta/Youngblood* motion,¹ which alleged police destruction of exculpatory evidence.

At appellant's suppression motion, Officer Jackeline Orellana testified that, while working undercover in a narcotics buy team, she made contact with appellant's codefendant, Barsegov. Barsegov asked her how many balloons of heroin she wanted and made a telephone call. She and other buyers then followed Barsegov to a place where he advised them to get their money ready because "his guy" was there. At that point, Barsegov crossed the street and met appellant. After a brief conversation, appellant walked away and Barsegov informed the buyers that his supplier was going to get the narcotics. After 20 minutes, Barsegov and appellant met at a point half a block away from Orellana and the other buyers. Barsegov returned to the buyers and said he was not going to sell them any narcotics.

Officer Anthony Jackson observed the meeting between Barsegov and appellant. He saw Barsegov hand appellant paper currency, and he saw appellant put the money into his briefcase. Appellant removed multicolored balloons from the briefcase and handed them to Barsegov. Appellant then walked away eastbound, and he was detained. When appellant was searched, police recovered \$634 from his pocket and a cell phone. Multicolored balloons were found in a box in appellant's briefcase. The balloons contained a powdery substance resembling heroin.

Appellant testified at the motion hearing that he met up with Barsegov only once that evening after Barsegov telephoned him. Because the telephone connection was poor, appellant went to see Barsegov in person. Barsegov asked appellant a question about a friend of his. Appellant answered and then walked eastbound. On the way, he was detained.

¹ *California v. Trombetta* (1984) 467 U.S. 479; (*Trombetta*); *Arizona v. Youngblood* (1988) 488 U.S. 51 (*Youngblood*).

The trial court found the testifying police officers to be credible. The court believed their testimony that a drug transaction occurred between appellant and Barsegov and that drugs were found on both men when they were detained. The trial court found that both the detention and the search of appellant's briefcase were valid.

On appellate review of a trial court's ruling on a motion to suppress evidence, the appellate body must accept the trial court's resolution of disputed facts and its assessment of the credibility of witnesses if supported by substantial evidence. (*People v. Williams* (1988) 45 Cal.3d 1268, 1301; *People v. Valenzuela* (1994) 28 Cal.App.4th 817, 823.) The trial court has the power to judge the credibility of witnesses, resolve any conflicts in testimony, weigh the evidence, and draw factual inferences for the purpose of making its factual findings. (*People v. Lawler* (1973) 9 Cal.3d 156, 160.) The trial court has the power to decide "what the officer actually perceived, or knew, or believed, and what action he took in response." (*People v. Leyba* (1981) 29 Cal.3d 591, 596.)

In the second step of a review of the grant or denial of a motion to suppress, the appellate court is required to independently apply the law to the factual findings. (*Ornelas v. United States* (1996) 517 U.S. 690, 696-698; *People v. Loewen* (1983) 35 Cal.3d 117, 123.) The appellate court must determine if the factual record supports the trial court's conclusions as to whether or not the detention met the constitutional standard of reasonableness. (*Ornelas v. United States, supra*, at p. 696 [determination of reasonable suspicion a mixed question of law and fact]; *People v. Lawler, supra*, 9 Cal.3d at p. 160.) We conclude the trial court's findings are supported by substantial evidence. We also conclude that the detention and search of appellant's person and briefcase were valid. Police had ample probable cause to conduct the search.

Appellant filed a *Trombetta/Youngblood* motion claiming that the police had video cameras in the area where appellant was detained at 621 South Spring Street and that the videos contained exculpatory evidence. The defense called Sergeant Jody Stiger who testified that he was in charge of the camera unit during the time that appellant was detained. He testified that no videos were made. Any surveillance that was captured went to a hard drive where it remained for 14 days and was then erased by new

surveillance images. He testified that the camera on Broadway and 6th Street was not working during his tenure. The camera on Spring Street and 6th Street was not functioning on the day of appellant's detention either. It had not functioned during the entire time that Sergeant Stiger was in charge of the camera unit because it was not connected to electricity. He testified that the camera unit was not part of the narcotics unit, and the camera unit had never received a request to download video pertaining to the detention of appellant.

Appellant took the stand at the hearing on the motion and testified that he had tried to obtain videos taken by the cameras. He stated that the video would show that a policeman planted a cigarette box containing balloons in a planter while appellant was made to stand facing a wall. Appellant was then accused of possessing the balloons. Appellant also testified that 50 people were standing across the street witnessing his detention. Defense counsel argued that having the videos would have allowed the defense to find witnesses to the detention.

The trial court denied the motion. It found the sergeant credible regarding the issue of whether the cameras were functioning. It was the sergeant's job to know that, and appellant would not have this knowledge. Also, there was no evidence of bad faith on the part of the police department.

Under the *Trombetta/Youngblood* line of cases, the prosecution and law enforcement must preserve evidence "that might be expected to play a significant role in the [defendant's] defense." (*Trombetta, supra*, 467 U.S. at p. 488.) To meet this standard, the evidence must "both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*Id.* at p. 489) To show a denial of federal constitutional due process from the destruction of such evidence, the defendant must also show that the police acted in bad faith. (*Youngblood, supra*, 488 U.S. at p. 58.)

The testimony by Sergeant Stiger showed that there was no evidence that any videos ever existed; therefore, there was no issue as to any exculpatory value of the

evidence or destruction of evidence. As the trial court stated, there was no evidence of bad faith on the part of the police either. We conclude the trial court ruled properly in denying the motion.

We have examined the entire record including the transcript of appellant's *Marsden* motion and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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